

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CONNECTU LLC,

Plaintiffs,

v.

MARK ZUCKERBERG, EDUARDO SAVERIN,
DUSTIN MOSKOVITZ, ANDREW MCCOLLUM,
CHRISTOPHER HUGHES, and FACEBOOK,
INC.,

Defendants.

CIVIL ACTION NO. 1:04-CV-11923
(DPW)

MARK ZUCKERBERG, and FACEBOOK, INC.,

Counterclaimants,

v.

CONNECTU LLC,

Counterdefendant,

and

CAMERON WINKLEVOSS, TYLER
WINKLEVOSS, and DIVYA NARENDRA,

Additional Counterdefendants.

**AFFIDAVIT OF ROBERT D. NAGEL IN SUPPORT OF FACEBOOK DEFENDANTS'
OPPOSITION TO CONNECTU LLC'S MOTION TO COMPEL DOCUMENTS IN
RESPONSE TO REQUESTS FOR PRODUCTION NOS. 171, 174-182 AND 184-187**

I, ROBERT D. NAGEL, declare as follows:

1. I am an attorney with the law firm of Orrick, Herrington & Sutcliffe LLP, counsel for Defendants Mark Zuckerberg, Dustin Moskovitz, Andrew McCollum, Christopher Hughes, and Facebook, Inc. (collectively, the "Facebook Defendants"). I make this Affidavit in support of the Facebook Defendants' Opposition to ConnectU LLC's Motion to Compel Documents in Response to Requests for Production Nos. 171, 174-182, and 184-187. I am an active member in good standing of the Bar of the State of California, and am admitted to appear *pro hac vice* before this court. I have personal knowledge of the facts stated therein and if called as a witness, could and would competently testify thereto.

2. On November 16, 2005, I participated in a telephonic meet and confer regarding ConnectU's second sets of interrogatories and requests for production. Also participating were ConnectU's counsel, Troy Grabow and Margaret Esquenet, and Facebook Defendants' counsel, Monte Cooper.

3. While discussing Facebook Defendants' response to Request for Production No. 173, Facebook Defendants' counsel stated that it believed that initial disclosures required by Federal Rule of Civil Procedure 26 were produced or made available to ConnectU near the start of this case. (Facebook Defendants' current counsel was not representing Facebook Defendants at the time of the initial disclosures.) These initial disclosure would include documents relevant to Facebook Defendants claims and defenses.

4. While discussing Facebook Defendants' response to Request for Production No. 175 at the November 16, 2005 meet and confer, Facebook Defendants' counsel Monte Cooper refused to produce documents responsive to this request based on Facebook Defendants' objection that it seeks irrelevant material.

5. While discussing Facebook Defendants' response to Request for Production No. 180 at the November 16, 2005 meet and confer, Facebook Defendants' counsel Monte Cooper stated that the term "database definitions" is vague and ambiguous and Facebook did not know what ConnectU intended the term to mean, for the term has a variety of possible interpretations. ConnectU's counsel Troy Grabow responded that this was a term of art, but could not give a definition at that time. Mr. Cooper responded, that if Facebook Defendants received a definition from ConnectU, it would re-investigate the existence of responsive documents; however, ConnectU never again communicated with Facebook Defendants regarding this issue.

6. Attached hereto as **Exhibit A** is a true and correct copy of exhibit 4 to the 30(b)(6) Deposition of ConnectU, dated August 9, 2005.

7. Attached hereto as **Exhibit B** is a true and correct copy of a letter from Robert D. Nagel to Troy Grabow, dated November 30, 2005, with confidential information redacted to avoid the necessity of filing under seal.

8. Attached hereto as **Exhibit C** is a true and correct copy of a letter from Robert D. Nagel to John Hornick, dated January 7, 2006.

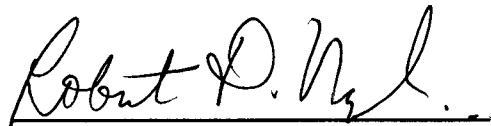
9. Attached hereto as **Exhibit D** is a true and correct copy of Plaintiff and Counterclaim Defendants' Fourth Set of Interrogatories, dated January 5, 2006.

10. Attached as **Exhibit E** is a true and correct copy of Plaintiff and Counterdefendants' Third Request for Production of Documents and Things, dated January 5, 2006.

11. Attached as **Exhibit F** is a true and correct copy of a U.S. District Court Subpoena issued in The Northern District of California, by M. Esquenet to Facebook, Inc., on January 5, 2006.

12. Attached as **Exhibit G** is a true and correct copy of an article of Courierjournal.com, entitled "*Meeting in Person? So '03*", dated December 28, 2005.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct. This declaration is executed on this 23rd day of January, 2006, at Menlo Park, California.


Robert D. Nagel

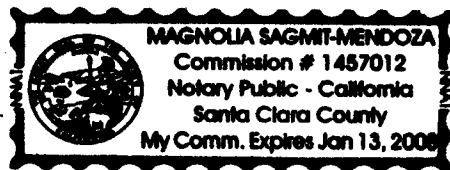
State of California

County of San Mateo

Subscribed and sworn to (or affirmed) before me on this 23rd day of January, 2006 by Robert D. Nagel, personally known to me on the basis of satisfactory evidence to be the person(s) who appeared before me.


Magnolia Sagmit-Mendoza, Notary

(Seal of Notary)



Dated: January 23, 2006.

Respectfully submitted,

/s/ Rob Nagel /s/

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* Admitted *Pro Hac Vice*